



Employment Court of New Zealand

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Gate Gourmet New Zealand Limited v Sandhu [2021] NZEmpC 20 (8 March 2021)

Last Updated: 14 March 2021

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA TĀMAKI MAKĀURAU

[\[2021\] NZEmpC 20](#)

EMPC 217/2020

IN THE MATTER OF a challenge to a determination of
the Employment Relations Authority
AND IN THE MATTER of an application for costs
AND IN THE MATTER of an application for stay of
proceedings
BETWEEN GATE GOURMET NEW ZEALAND
LIMITED
First Plaintiff
AND SHAUN JOILS
Second Plaintiff
AND SUHKJEET SANDHU
First Defendant
AND HUIPING WU
Second Defendant
AND SELLIAH NESUM NIRANJALA
Third Defendant
AND ROSALINA LEANNA
Fourth Defendant
AND SUTHARSHINI ANTHONY RUPS
MIRANDA
Fifth Defendant

Hearing: On the papers

Appearances: E Butcher, counsel for plaintiffs
M W O'Brien, counsel for
defendants

Judgment: 8 March 2021

GATE GOURMET NEW ZEALAND LIMITED v SHAUN JOILS [\[2021\] NZEmpC 20](#) [8 March 2021]

INTERLOCUTORY JUDGMENT (NO 2) OF CHIEF JUDGE CHRISTINA INGLIS

(Application for stay of proceedings)

[1] The plaintiffs have applied for an order of costs against the defendants following their successful challenge to a determination of the Employment Relations Authority.¹ The defendants have sought leave to appeal the Court's judgment and seek a stay of costs pending the outcome of the appeal process. The plaintiffs oppose any stay. The parties are content for the application to be dealt with on the papers.

[2] An application for leave to appeal does not operate as a stay of proceedings. It is not unusual for costs to be set despite an appeal being advanced by one of the parties.² Similarly it is not unusual for the Court to grant a stay in such circumstances.³ Much has to do with the particular circumstances of the case. In *Ioan* Judge Holden exercised her discretion to fix costs, on the basis that both parties were entitled to know the amount of costs awarded and fixing those costs would not have been an overly complex exercise. In *White* Judge Ford declined to determine costs pending an appeal to the Court of Appeal. He considered that course to be preferable to putting the parties to the expense of arguing a matter that might never need to be determined or might be determined differently depending on the outcome of the appellate process.

[3] The defendants each work for the first defendant company and are paid at the minimum wage rate. The plaintiffs seek an award of costs against them of \$52,300. That figure comprises Guideline Scale costs, uplifted to reflect conduct said to have unnecessarily increased costs; costs in the Employment Relations Authority (which remain outstanding); and costs of \$2,500 in seeking costs.

[4] As counsel for the defendants points out, setting costs in this case will not simply involve a calculation according to the Guideline Scale, particularly given the

1 *Gate Gourmet New Zealand Limited v Sukhjeet Sandhu* [2020] NZEmpC 237.

2. See, for example, *Bracewell v Richmond Services Ltd* [2014] NZEmpC 171 at [4] and *Ioan v Scott Technology NZ Ltd t/a Rocklabs* [2018] NZEmpC 58.

3 *White v Reserve Bank of New Zealand* [2012] NZEmpC 125.

position adopted by the plaintiffs and broader issues as to the nature of the hearing, the respective financial position of the parties, and the fact that costs remain unresolved in the Authority. In addition, counsel for the defendants has signalled that a payment into Court may be sought if costs are awarded, based on concerns about the first plaintiff's financial position.

[5] The application for leave to appeal to the Court of Appeal will be heard in the week of 16 April 2021. I accept that it is being pursued in good faith. If leave is declined, the matter can come back before the Court and any outstanding issue of costs can be promptly dealt with. If leave is granted and the appeal proceeds, the ultimate outcome may impact on the issue of costs, including both in the Court and the Authority.

[6] While I accept that the plaintiffs have an interest in enjoying the fruits of their success on the challenge, it is necessary to consider matters more broadly in the exercise of the Court's discretion. I do not consider it desirable to layer additional costs (potentially unnecessary) on the defendants at this stage, when resolving costs would involve a degree of complexity; when matters can conveniently be dealt with at a later date; and where there is nothing to suggest that the plaintiffs will be materially prejudiced by a stay in the interim.

[7] For the above reasons, I grant a stay of the determination of costs. The determination of costs in the Employment Court is accordingly stayed pending the outcome of the appeal process to the Court of Appeal or further order of this Court.

[8] Costs on the application are reserved.

Christina Inglis Chief Judge

Judgment signed at 9.30 am on 8 March 2021